

**STATE OF NEW JERSEY  
NEW JERSEY PUBLIC BROADCASTING AUTHORITY (“NJPBA”)  
REQUEST FOR PROPOSALS (“RFP”)  
FOR  
LEASE OF EXCESS EDUCATIONAL BROADBAND SERVICES CAPACITY  
CHANNEL C1 OF TRENTON, NEW JERSEY STATION WLX 250**

**1.0 INFORMATION FOR BIDDERS**

**1.1 PURPOSE AND INTENT**

This Request For Proposals (“RFP”) is issued by the New Jersey Public Broadcasting Authority (“NJPBA”) to request proposals from qualified entities who would lease excess capacity on the recently added Channel C1 of the NJPBA Educational Broadband Service (“EBS”) station WLX250 (the “Channel”), to pay for Channel construction, transmission equipment, and operations, and to pay royalties (rent) to the NJPBA while also permitting the NJPBA to utilize the constructed Channel, transmission equipment and operations so that the NJPBA can provide required educationally oriented services in accordance with the rules of the Federal Communications Commission (“FCC”).

**1.2 BACKGROUND**

**1.2.1 GENERAL**

It is assumed that those responding to this RFP are familiar with or will before responding become familiar with the rules of the FCC with respect to the licensing, operation, and leasing of excess capacity of EBS stations and associated policies. Those rules are set forth at the applicable provisions of 47 Code of Federal Regulations Part 27, Subparts A, B, C, and M. For convenience, a copy of those rules may be accessed at <http://tinyurl.com/664rhs>; however, if for any reason that link is not operative it shall be respondents’ obligation to secure access to the rules.

The NJPBA was established pursuant to L. 1968, c. 405, as amended, including by the New Jersey Public Broadcasting System Transfer Act, L. 2010, c. 104 (the “Transfer Act”). In accordance with the Transfer Act, the NJPBA entered into a Programming and Services Agreement with Public Media NJ, Inc. (the “PMNJ Agreement”). Pursuant to the PMNJ Agreement, Public Media NJ, Inc. (“PMNJ”) provides high-quality, non-commercial television programming for NJPBA’s television stations, including New Jersey-centric television programming specifically designed to meet the needs of all the citizens of the State of New Jersey (the “State”) in all regions of the State. NJPBA continues to be the licensee of the non-commercial television stations and Educational Broadband Service stations. NJPBA is responsible for and continues to operate and maintain the public broadcasting system in the State.

The NJPBA also provides statewide distribution of Emergency Alert System messages for the New Jersey Office of Emergency Management.

The NJPBA currently falls under the Department of the Treasury, as an "in but not of" agency within the State of New Jersey.

The NJPBA is the licensee of five EBS Stations, including WLX 250, Trenton, NJ, now licensed on Channels C1-C4. Formerly, station WLX250 was licensed for Channels C2, C3 and C4 only. Pursuant to FCC action on June 12, 2012, the C1 Channel was added to the licensed station. A map, depicting the approximate service area of EBS Station WLX 250 on the Channel C1, appears as Attachment A to this RFP.

Coverage of the Station is determined by FCC rules, and shall be referred to herein as the Trenton market ("Market").

Excess capacity of Channels C2, C3 and C4 of station WLX250 is under lease to Clearwire Spectrum Holdings III, LLC. Therefore, only the Channel (Channel C1) is the subject of this RFP.

### **1.2.2 ADDITIONAL DETAIL-EBS EXCESS CAPACITY LEASE FOR TWO-WAY DIGITAL VIDEO, DATA AND VOICE**

The NJPBA has decided to utilize the Channel for advanced wireless services and to lease such spectrum as is permitted under the FCC's EBS and secondary market rules. The NJPBA intends to provide educationally oriented services on the Channel while leasing excess capacity to a lessee ("Lessee") for providing advanced wireless services on the Channel. The NJPBA desires to optimize the use of the licensed spectrum and the Channel so as to create additional broadband options for its own and associated educational institutions within the Market as well as provide an additional source of broadband wireless services. The NJPBA seeks to derive income from leasing EBS excess capacity.

This RFP solicits proposals for financial, technical and operations (but not programmatic) support for NJPBA and its educational use of the Channel with the purpose of selecting a lessee that who intends to develop promptly an advanced wireless network serving the Market. The intent of this RFP is for bidders to propose how, when and where it will utilize the excess capacity to construct and operate an advanced wireless service network on the Channel and what cash compensation it is prepared to provide to the NJPBA.

Proposals and the operations of the Lessee must adhere to all spectrum leasing rules. Respondents should reference, as appropriate, FCC rules concerning spectrum leasing. The NJPBA notes that the FCC has posted a list of its requirements related to leasing spectrum at [http://wireless.fcc.gov/services/index.htm?job=licensing\\_1&id=ebs\\_brs](http://wireless.fcc.gov/services/index.htm?job=licensing_1&id=ebs_brs) If for any reason that link is not operative it shall be respondents' obligation to secure access to applicable FCC rules and policies.

The Lessee will provide and maintain all necessary facilities, hardware, software operating systems, security, network connectivity, and authentication resources to construct, maintain, and operate a digital wireless internet service. No NJPBA services, facilities, or resources, other than

excess capacity on the Channel, will be provided. The NJPBA desires to select a Lessee that can provide the financial resources, operational plan, technology, and expertise to build a competitive and fully functional regional digital wireless service.

The winning bidder will be selected following a thorough review of the proposals of each bidder.

### **1.3 KEY EVENTS**

#### **1.3.1 QUESTIONS, INQUIRIES AND ANSWERS**

The NJPBA will accept questions and inquiries from all potential bidders regarding this RFP.

Questions must be e-mailed to Mr. Richard Williams, Director of Engineering, New Jersey Public Broadcasting, NJPBA, at the following address: rick.williams@treas.state.nj.us.

Questions should be directly relevant to the RFP. Questions should be asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates. Questions must be received at or before 5:00 p.m. prevailing local time on February 28, 2014. Questions submitted by phone calls or faxes will not be accepted or answered.

All questions properly received and corresponding answers will be posted on the NJPBA website at <http://www.state.nj.us/treasury/njpba/publicinfo.shtml>, under the title; WLX-250 RFP Questions.

#### **1.3.2 REVISIONS TO THIS RFP**

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Addenda will be posted on the NJPBA website under WLX-250 RFP Addenda.

#### **1.3.3 QUESTIONS AND ANSWERS AND ADDENDUM AS A PART OF THIS RFP**

All Questions and Answers and addenda to this RFP posted on the NJPBA website shall become part of this RFP and part of any proposal resulting from this RFP.

Interested parties are encouraged to frequently check the NJPBA website for any revisions, additional information, addenda pertaining to this RFP, as well as posted Questions and Answers.

#### **1.3.4 BIDDING DEADLINE**

Bid Closing Date: March 14, 2014

Bid Closing Time: 2:30 p.m.

#### **1.3.5 SUBMISSION OF PROPOSALS**

All proposals must be clearly marked on the outside of sealed packages as follows:

“EBS EXCESS CAPACITY LEASE PROPOSAL” along with the following identifying information about the Respondent:

From:

Respondent's Name

Street Address or PO Box Number

City, State, Zip Code

In order to be considered for approval, a complete proposal must be delivered to the NJPBA at the location listed below by the Bid Closing Time on the Bid Closing Date:

LOCATION: New Jersey Public Broadcasting NJPBA  
PO Box 777  
Trenton, NJ 08625-0777  
**ATTN: Mr. Richard Williams**  
**Director of Engineering**

The street address for courier or overnight delivery services is:

New Jersey Public Broadcasting NJPBA  
25 South Stockton Street  
Trenton, NJ 08608-1832  
**ATTN: Mr. Richard Williams**  
**Director of Engineering**

#### **1.3.6 EXECUTION OF LEASE AGREEMENT**

The successful respondent and the NJPBA shall cooperate to finalize lease terms and sign a lease agreement within one month after the NJPBA selects a winning bidder by entering into a lease agreement substantially in the form of the Educational Broadband Service Long-Term de facto Lease Agreement attached hereto as Attachment B of this RFP (“Lease Agreement”).

## **2.0 PROPOSALS**

### **2.0 PROPOSAL PREPARATION AND SUBMISSION**

#### **2.1 GENERAL**

Proposals must include all information requested in this RFP. Any qualifying statements made in the proposal could result in a determination that the proposal is materially non-responsive.

#### **2.2 NUMBER OF PROPOSAL COPIES**

Each bidder must submit one (1) complete original proposal, clearly marked as the "ORIGINAL" with five (5) complete and exact hard copies of the original and a complete and exact copy of the original on disc in 'pdf' format. All proposals must be typed with erasures or strikeover corrections initialed. It is suggested that the bidder make and retain a copy of its proposal.

#### **2.3 FORMAT OF PROPOSALS**

**2.3.1** Proposals must be signed by an authorized representative of the respondent. All information requested must be submitted. Failure to submit all information requested may result, in the NJPBA's sole discretion, in the NJPBA (1) requiring prompt submission of missing information, (2) evaluating the proposal less favorably, or, in the case of a proposal that is substantially incomplete or lacking key information, (3) rejection of the proposal.

**2.3.2** Required format for signing proposals:

**Name (print):** \_\_\_\_\_

**Title (print):** \_\_\_\_\_

**Company Name (print):** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**2.3.3** Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities and plans to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. The format of the proposal shall be as follows:

## **2.4 CONTENTS OF ROPOSALS**

All proposals must provide, at a minimum, the information requested in the following order and number sequence. Specifically state in all applicable sections(s) whether the NJPBA would have any cost/obligations associated with a function described:

**2.4.1 Title Page and Contact Information** The title page shall identify who will be the primary contact for purposes of the RFP and should identify that person by name, address, telephone number, fax number, and e-mail address. It would be helpful if the Title Page is followed by a separate table of contents page.

**2.4.2 Bidder's Organizational Structure** Provide the full name and address of the organization, and identify any parent companies. Provide the date and place of formation of the organization. Identify the ownership and senior management of the organization and its primary business purposes.

**2.4.3 Executive Summary** General description and overview of bidder's proposal.

**2.4.4 Financial Qualifications** The company's financial capabilities, including its ability to lease the Channel for the financial compensation specified in the company's proposal, to construct the Channel and to provide the contemplated service, all in accordance with the Lease Agreement. Provide financial statements or other documentation that demonstrates the bidder's ability to successfully discharge its obligations.

**2.4.5 Management/Operational Experience** Information about the company including its management and any experience using EBS spectrum.

**2.4.6 Legal Qualifications** The Company's legal qualifications under applicable FCC rules to lease the Channel on the terms set forth in Attachment B.

**2.4.7 Technical Qualifications** The Company's technical capabilities, including its ability to deploy the Channel in a manner that satisfies the Licensee's obligations under all relevant FCC rules and regulations.

**2.4.8 Proposed Lease Term** Set forth the proposed lease term and any renewal provisions, while confirming that the maximum lease term (including all potential renewals) shall not exceed thirty (30) years.

**2.4.9 Experience** Any relevant examples of the company's success in deploying wireless broadband systems on EBS spectrum in other markets, including, if applicable, at least two examples of past or current analogous leases in which it is the lessee and contact information for references for such leases, including the name, address, and phone number of a representative of lessors whom the NJPBA could contact and an indication of whether any analogous leases cited are subject to confidentiality provisions.

**2.4.10 Financial Proposal** Financial compensation to be paid to the NJPBA, including:

- A. Cash payment upon commencement of initial term,
- B. Cash payments upon commencement of renewal term(s),
- C. Monthly or quarterly Lease payments,
- D. Monthly or quarterly Service Credit allocation.

The respondent must indicate the MHz/pop calculations that it has used in formulating its financial proposal and attach a graphic representation of its calculation of the Geographic Service Areas of the Channel if such representation differs from Attachment A of this RFP.

The Financial Proposal should also describe bidder's willingness to reimburse expenses (both as to the contracting process and during the lease term).

**2.4.11 Business Plan, Technical Project Plan and Timeline** Respondents must propose: (1) a comprehensive business strategy to utilize the leased spectrum for the development of a commercial wireless service serving the Market; (2) a technical project plan that describes the respondent's technical approach to delivering regional wireless service (including proposed equipment), the utilization of the leased spectrum, service area map, and strategy for providing backhaul service to the region; and (3) a project timeline for the steps to roll out wireless service.

**2.4.12 Broadband services to be offered to the NJPBA** The NJPBA is required to provide 20 hours per channel per week of educational usage and to make "substantial use" of the Station as defined by FCC rules. Respondent's response to this RFP should clearly detail the manner in which broadband services will be provided in satisfaction of FCC requirements.

**2.4.13 Construction Milestones** Provide a timetable for key construction milestones and indicate how the NJPBA can protect the license if there is a failure to provide substantial service in a timely manner as required by the FCC's deadline.

**2.4.14 Substantial Service Requirement** Describe whether the bidder anticipates assisting the NJPBA in meeting applicable FCC deployment and service requirements, and if so, how.

**2.4.15 Exception to Standard Lease Terms, Conditions and Technical Considerations** Respondents should indicate either its acceptance of the standard terms and conditions set forth in the Lease Agreement attached to this RFP as Attachment B; or list any requested changes to the standard terms and conditions (Attachment B). The NJPBA is under no obligation to grant or accept any requested changes to the specimen form of Lease Agreement. Bidders are encouraged to carefully review the specimen form of Lease Agreement attached to this RFP as Attachment B.

### **3.0 ORAL PRESENTATION**

Respondents that submit a proposal in response to this RFP may be requested to give an oral presentation to clarify or elaborate on the proposal, but such presentation will in no way change the original proposal. Oral presentations will be at the option of the NJPBA and might not be conducted.

### **4.0 PROPOSAL EVALUATION**

#### **4.1 EVALUATION COMMITTEE**

Proposals will be evaluated by an Evaluation Committee that may be composed of staff members of the NJPBA as well as employees of other governmental agencies. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultants in an advisory role.

#### **4.2 EVALUATION CRITERIA**

**4.2.1 Opening of Proposals** At the designated time and date, personnel of the NJPBA will open and list the proposals for the record. Proposals that are timely submitted will be publicly opened at the offices of the NJPBA. Responses received after the due date in the cover letter shall be returned unopened.

**4.2.2 Evaluation** During the evaluation phase, proposals will be reviewed by the Evaluation Committee (possibly with input from its outside advisors) to determine which proposals address all the requirements of this RFP and for their technical merit review. Proposals determined to be technically non-responsive may be eliminated at this point.

**4.2.3 Oral Presentation** The Respondents that appear to have presented the proposal that would be most advantageous for the NJPBA, based on price and other factors, may be selected as finalists for further evaluation and possibly an oral presentation. There is no specified number of finalists that may be selected for an oral presentation.

### **5.0 ADDITIONAL INFORMATION**

#### **5.1 PUBLIC DOCUMENT AND PROPRIETARY INFORMATION**

Bidders should be aware that the content of proposals becomes a public record and will be available, upon request, for public inspection. This is the case notwithstanding any statement to the contrary made by a bidder in its proposal. Any proprietary information contained in a proposal must be clearly and conspicuously marked as confidential information. The NJPBA staff will make reasonable efforts not to disclose information that is marked as confidential; however, all respondents are cautioned that the NJPBA is subject to the provisions of the New



Jersey Open Public Meetings Act, the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1), and the New Jersey Right-to-Know statutory law and relevant case law. In order to enter into a Lease Agreement, the NJPBA Board of Commissioners will need to approve the selection of the winning proposal at an open, public Board meeting.

## **5.2 GOVERNING LAW**

This RFP and the selection and award process undertaken by the NJPBA pursuant to this RFP shall be governed and controlled by the laws of the State of New Jersey.

## **5.3 DUE DILIGENCE**

The NJPBA makes no representations or warranties about the use of this spectrum for particular services and does not endorse any particular service, technology, or product. Respondents should conduct their own individual due diligence to, among other things, determine the existence of pending administrative or judicial proceedings that might affect the facilities and to evaluate all legal, technical and marketplace factors that may affect the value of the spectrum offered. In addition, respondents should perform technical analyses and engineering studies sufficient to assure themselves that they will be able to build and operate facilities that will fully comply with the FCC's technical and legal requirements. Respondents are solely responsible for identifying associated risks of leasing the spectrum. The NJPBA makes no representations or warranties regarding the accuracy or completeness of information in FCC databases or in any third party databases or regarding the accuracy or completeness of information that has been provided by licensees and incorporated into the database. Respondent(s) assume the risk of any incompleteness or inaccuracy in such databases and in any information provided or attached to this RFP, including Attachment A to this RFP. If any errors or omissions are discovered, please contact the NJPBA at the address provided herein.

## **5.4 BINDING NATURE OF PROPOSALS**

A proposal may be withdrawn before the date and time set for the submission of the proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days from the opening of the proposal or until another proposal has been accepted and awarded by the NJPBA.

## **5.5 RESPONSIBILITIES OF BIDDERS**

Any person, firm, corporation, or association submitting a proposal shall be deemed to have read and understood all the terms, conditions, and requirements in this RFP. All responses and accompanying documentation will become the property of the NJPBA at the time the proposals are opened. The NJPBA shall not reimburse any Respondent(s) costs of responding to this RFP. By submitting a proposal for the RFP, the Respondent(s) agrees to enter into a Lease Agreement in substantial accordance with Attachment B to this RFP and the terms and conditions set forth in the Proposal.

## **5.6 RESERVATION OF RIGHTS BY THE NJPBA**

**5.6.1** Any bidder attempting to contact government officials (elected or appointed) or the NJPBA's Board members or staff, in an effort to influence the selection process, shall immediately have its proposal summarily rejected and disqualified.

**5.6.2** The NJPBA reserves the right to reject any and/or all proposals, or any part thereof, or to award a lease as may appear advantageous to the NJPBA, price and other factors considered, and to waive or decline to waive any and all irregularities in any proposal when it determines that it is in the NJPBA's best interest to do so.

**5.6.3** The NJPBA reserves the right to request redefined proposals from any entity responding to this RFP or to request clarifications of any portion of a proposal received. Further, the NJPBA reserves the right, at its sole discretion, to waive minor elements of non-compliance of any entity's proposal, with regard to the requirements outlined in this RFP, to request additional information from, any and all firms; to waive any requirements, or minor informalities; to modify or amend, with the consent of the submitting firm, any statement, as may be permitted by law; and to effect any agreement deemed by the NJPBA to be in its best interest, and the best interest of the NJPBA.

**5.6.4** The NJPBA retains the discretion to modify, expand or delete any portion of this RFP or terminate the selection process or this RFP at any time.

**5.6.5** Subject to approval of the governing body of the NJPBA, selection of the successful respondent will be based upon a determination of which proposal is viewed as the most favorable to the NJPBA, based on the criteria listed above, considering price and other factors.

## **6.0 COMPLIANCE REQUIREMENTS**

### **6.1 POLITICAL CAMPAIGN CONTRIBUTION REQUIREMENTS – P.L. 2005, c.51**

On March 22, 2005, Acting Governor Codey signed into law P.L. 2005, c. 51, amending and supplementing N.J.S.A. 19:44A-20.1 et seq. This legislation supersedes Executive Order 134 (2004) ("EO 134"), but essentially codified its substantive provisions aimed at safeguarding the integrity of State government procurement by imposing restrictions to insulate that process from political contributions posing the risk of improper influence, purchase of access, or the appearance thereof. As set forth in detail below, a selected entity will be required to respond in a timely fashion to certification and disclosure requirements that will be issued by the NJPBA. Under N.J.S.A. 19:44A-20.24, the terms and conditions set forth in this section are material terms of the RFP and Lease.

(1) Definitions. For purposes of this section, the following shall be defined as follows:

i. "Contributions" means a contribution reportable by the recipient under the New Jersey Campaign Contributions and Expenditures Reporting Act, P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et

seq.), and implementing regulations set forth at N.J.A.C. 19-25-7 and N.J.A.C. 19:25-10.1 et seq. a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws. The provisions of P.L. 2005, c. 51 shall apply only to contributions made on or after October 15, 2004.

ii. "Business Entity" means a for-profit entity as follows:

- A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;
- B. in the case of a general partnership: the partnership and any partner;
- C. in the case of a limited partnership: the limited partnership and any partner;
- D. in the case of a professional corporation: the professional corporation any shareholder or officer;
- E. in the case of a limited liability company: the limited liability company and any member;
- F. in the case of a limited liability partnership: the limited liability partnership and any partner;

G. in the case of a sole proprietorship: the proprietor; and

H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof; any subsidiary directly or indirectly controlled by the business entity;

iii. any political organization organized under section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

iv. with respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, this Order shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").

c) PL 2005, c.51 – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

(2) Prohibited Conduct. No NJ State entity, including the NJPBA, shall not enter into a contract valued at more than \$17,510 for goods or services with any Business Entity, if the Business Entity solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for a holder of the public office of Governor, or to any State or county political party committee on or after October 15, 2004.

(3) Certification and Disclosure Requirements:

(i) Requirements for Selected Entity. The selected entity shall receive notification that will, among other things, notify the entity that it must submit a "Vendor Certification and Disclosure of Political Contributions" form and "Business Entity Disclosure" form as provided by the NJPBA. Failure to submit these forms in a timely fashion shall be cause for rejection of the entity. Proposers are not required to include the P.L. 2005, c. 51 forms as part of the Proposal submission. Only the selected entity will need to complete and submit these forms. Selected entity will be notified by the NJPBA at the appropriate time.

(ii) Firm's Continuing Obligation to Comply with P.L. 2005, c. 51. The selected entity shall be required on a continuing basis to disclose and report to the NJPBA any contributions made during the Lease term by the Business Entity on forms provided by the NJPBA, at the time it makes the contribution.

(4) State Treasurer Review. Prior to the award of the Lease, the State Treasurer or his designee shall review the Disclosures submitted by the apparent successful entity, as well as, any other pertinent information concerning the contributions or reports thereof. This review will also take place on a continuing basis during the term of the Lease. If the State Treasurer determines that any contribution or action of the successful bidder constitutes a breach of the Lease pursuant to this section, or presents a conflict of interest in the awarding of the Lease under this solicitation, the State Treasurer shall disqualify the Business Entity from award of this or any future contract.

**6.2 POLITICAL CAMPAIGN CONTRIBUTION COMPLIANCE REQUIREMENTS**  
**– P.L. 2005, c.271**

Bidders are advised that the winning bidder will have a responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC"), pursuant to C. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if the winning bidder pays in excess of \$50,000 to NJPBA in a calendar year. It is the winning bidder's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

**6.3 CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN**  
**IRAN**

Pursuant to N.J.S.A. 52:32-58, each proposal must include the bidder's certification that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investments activities set forth in N.J.S.A. 52:32-56(f). If a bidder is unable to so certify, its proposal must include a detailed and precise description of such activities.

**Attachment A**

**Coverage Map**

**Attachment B**

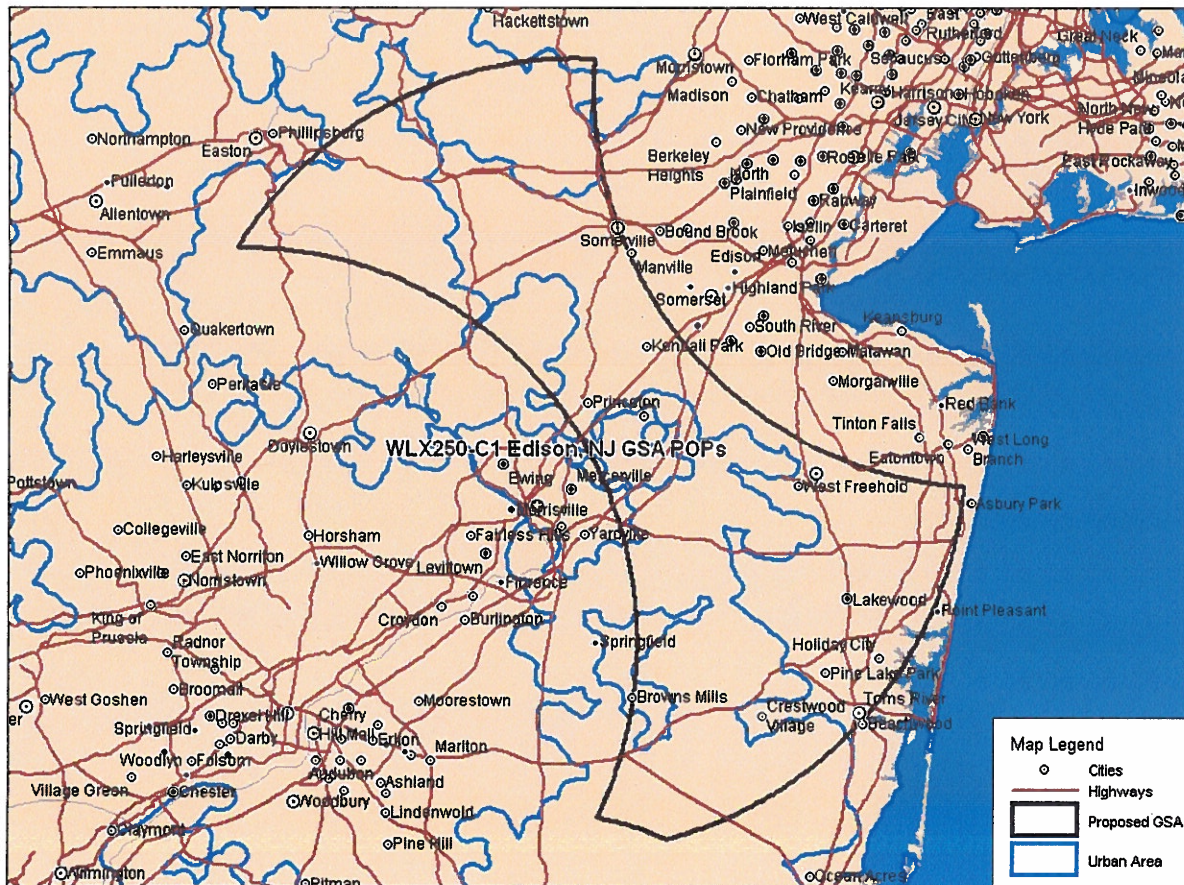
**De Facto Lease Agreement**



# ATTACHMENT A

## STATE OF NEW JERSEY NEW JERSEY PUBLIC BROADCASTING AUTHORITY ("NJPBA") LEASE OF EXCESS EDUCATIONAL BROADBAND SERVICES CAPACITY CHANNEL C1 OF TRENTON, NEW JERSEY, STATION WLX 250

### WLX250-C1







## **ATTACHMENT B**

**STATE OF NEW JERSEY  
NEW JERSEY PUBLIC BROADCASTING AUTHORITY ("NJPBA")  
LEASE OF EXCESS EDUCATIONAL BROADBAND SERVICES CAPACITY  
CHANNEL C1 OF TRENTON, NEW JERSEY, STATION WLX 250**

### **EDUCATIONAL BROADBAND SERVICE LONG-TERM *DE FACTO* TRANSFER LEASE AGREEMENT**



**EDUCATIONAL BROADBAND SERVICE  
LONG-TERM *DE FACTO* TRANSFER LEASE AGREEMENT**

THIS Educational Broadband Service ("EBS") Long-Term *De Facto* Transfer Lease Agreement (the "**Agreement**") is entered into as \_\_\_\_\_, 2013 (the "**Effective Date**"), by and between the New Jersey Public Broadcasting Authority, an instrumentality of the State of New Jersey (the "**Licensee**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Operator**") (each sometimes referred to as "**Party**" and collectively as "**Parties**").

WHEREAS the Federal Communications Commission ("**FCC**") has authorized the following EBS channel (collectively, together with any associated guardband channels that may be granted, the "**Channel**") under the following call sign (the "**License**") to Licensee to transmit in the following market area (the "**Market**"); and

Market  
Trenton, NJ

License  
WLX250

Channel  
C-1

WHEREAS the Parties have agreed to enter into this Agreement for Licensee to lease to Operator the capacity on the Channel which, pursuant to the rules, regulations and policies of the FCC (the "**FCC Rules**"), can be made available for commercial use, in accordance with the terms and conditions below, and subject to FCC approval, and Operator desires to use such capacity, together with other spectrum Operator may lease or be licensed to use in the Market to provide wireless services (all such spectrum and facilities used in the Market in connection with the provision of wireless services being the "**Wireless System**");

THEN, in consideration of the promises and covenants set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is acknowledged by the Parties' signatures, the Parties agree as follows:

**1. LEASE TERM AND RENEWAL**

(a) **Initial Term and Extension.** Subject to Subsection 1(c) and/or the earlier termination of this Agreement in accordance with Section 11, the initial term will begin on the date of issuance by the FCC of a public notice announcing the grant of the FCC Long Term Lease Application (as hereinafter defined) filed by the Parties with respect to this Agreement pursuant to Section 9 of this Agreement (the "**Commencement Date**"), and will end on the date that the then-current License expires (the "**Initial Term**").

(b) **Renewal.** Subject to Subsection 1(c) and/or the earlier termination of this Agreement in accordance with Section 11, this Agreement will renew for successive terms on the date that the License is renewed by the FCC ("**Renewal Date**") and expire when the renewed License expires (each, a "**Renewal Term**"); provided that the final Renewal Term will conclude thirty (30) years after the Commencement Date, for a maximum Agreement duration of thirty (30) years. The Renewal Terms will occur automatically unless Operator notifies the Licensee in writing at least twelve (12) months prior to the end of the Initial Term or any Renewal Term that it declines to renew the Agreement. The terms and conditions of this Agreement apply to each Renewal Term. The Initial Term and all Renewal Terms are collectively referred to herein as the "**Term**."

(c) **Renewal of License and Extension of Agreement.** If the License expires during the Initial Term and/or any Renewal Term, then this Agreement will also expire at such time unless the License is renewed and FCC authorization for this Agreement is extended. Licensee and Operator will cooperate to timely file a renewal application for the License, in conjunction with a request for an extension of the then-applicable Initial Term or Renewal Term of this Agreement, to the date that is ten (10) years from the beginning of such Initial Term or Renewal Term, except that in the case of the final Renewal Term, to the date that is thirty (30) years after the Commencement Date. This Agreement will continue to apply unless the FCC denies by Final Order any application for renewal of the License or extension of the Term. "Final Order" means an order issued by the FCC that is in full force and effect and as to which (i) no timely filed petition for reconsideration, application for review or appeal is pending and (ii) the time for the filing of any such petition, application or appeal has passed.

## 2. COMPENSATION

(a) **Payment Receipt Address.** Payments under this Agreement will be made to the following address, which may be changed by Licensee from time to time upon notice to Operator pursuant to this Agreement:

Payment instructions by check:

Wire instructions:

(b) **Monthly Fee.** Beginning within ten (10) business days of the Commencement Date, and on the first day of each month thereafter throughout the Term, Operator will pay Licensee a monthly fee as specified in the attached Schedule 2(a) (the “**Monthly Fee**”) for use of Operator Capacity (as defined below). The Monthly Fee due for any partial calendar month, at the commencement of the Initial Term or expiration of the Term, will be prorated accordingly. Operator’s obligation to pay the Monthly Fee is subject to Licensee delivering to Operator (i) a completed IRS Form W-9 (attached hereto as Exhibit A) and (ii) payment instructions in the form attached as Exhibit B or otherwise in a form acceptable to Operator.

(c) **Adjustment to Monthly Fee.** The Monthly Fee will be reduced or increased on a pro rata basis during the Term of this Agreement in the event that: (i) the amount of Operator Capacity (as defined in Subsection 5(a) below) increases or decreases from the amount of Operator Capacity available as of the Effective Date, or (ii) there is a change in the size or location of the Geographic Service Area (“**GSA**”) for any Channel as compared to the GSA that exists as of the Effective Date. For the purpose of the foregoing, the pro-ration of the Monthly Fee with respect to increases or decreases in Operator’s Capacity will be based on the number of megahertz (“**MHz**”) of capacity made available to Operator as a result of such increase or decrease as compared to the number of MHz of capacity contemplated to be made available to Operator under this Agreement. The pro-ration of the Monthly Fee with respect to any change in the size or location of the GSA with respect to any amount of capacity will be based on the number of MHz per population made available to Operator as a result of such change as compared to the MHz per population contemplated to be made available under this Agreement (relying on the GSA map attached hereto as Exhibit C). In making either calculation, however, the J and K channels associated with the Channel following the Transition (as hereinafter defined) will not be considered to be unavailable to Operator as a result of any determination by Operator that such J and K channel capacity is not, at any given time, configurable or usable in a manner that is commercially useful to Operator.

(d) **Prepaid Fee.** Within ten (10) business days of the date upon which the FCC grant of the FCC Long Term Lease Application becomes a Final Order, Operator will pay to Licensee the amount of \_\_\_\_\_ (\$\_\_\_\_\_) (the “**Prepaid Fee**”). Operator’s obligation to pay the Prepaid Fee is subject to Licensee delivering to Operator (i) a completed IRS Form W-9 (attached hereto as Exhibit A) and (ii) payment instructions in the form attached as Exhibit B or otherwise in a form acceptable to Operator.

## 3. EXCLUSIVITY AND RIGHT TO PARTICIPATE

(a) **Exclusivity.** During the Term, Licensee will not negotiate or contract with any third party to lease, sell, assign, transfer or use any of the capacity of the Channel or any option therefor. The foregoing notwithstanding, during the last six (6) months of the final Renewal Term, and during the Initial Term or any other Renewal Term following Operator’s notice to Licensee that it has elected not to renew the Agreement, in accordance with Subsection 1(b), if any, Licensee may negotiate and contract with any third party with respect to any period following the end of this Agreement. Furthermore, nothing in this Agreement will be deemed to prohibit Licensee from utilizing Licensee’s Reserved Capacity consistent with Section 5(c) or from negotiating and entering into any assignment of the License or transfer of control transaction that Licensee may undertake pursuant to Section 10.

(b) **Right to Participate.** Except in the event this Agreement terminates as a result of Operator’s default, if Licensee decides to consider, issue or solicit bids, proposals or offers for the sale (if permitted by the FCC), assignment, transfer or use of any part or the whole of the Channel at any time before eighteen (18) months after the end of this Agreement, then Licensee will provide Operator with an opportunity no less favorable in timing or substance than the opportunity provided to any other entity: (i) to receive and/or submit bids, proposals

and offers for the Channel; (ii) to receive information with respect to such bids, proposals, offers and counters thereto; (iii) to discuss any of the same with Licensee; (iv) to counter any such bids, proposals or offers; and (v) to be provided with copies (to the extent allowed by law) of all open bids, proposals, offers, counter-bids and counter-offers promptly after they are received by Licensee.

#### 4. RESERVED

#### 5. CAPACITY REQUIREMENTS AND USES

(a) **Operator Capacity.** Upon consent by the FCC to the FCC Long Term Lease Application described in Section 9(a), Operator will have the exclusive right to use all of the capacity under the Channel other than Licensee's Reserved Capacity ("**Operator Capacity**").

(b) **Licensee's Reserved Capacity.** The term "**Licensee's Reserved Capacity**" shall mean the capacity on the Channel that is required to be set aside for Licensee's use pursuant to FCC Rules, as the same may change from time to time. Consistent with FCC Rules, and as designated by Operator from time to time, Licensee's Reserved Capacity may be shifted or loaded on any Channel and/or other EBS or BRS channels that Operator controls in the Market, or portion thereof. If, in accordance with the foregoing sentence, Operator elects to shift or load Licensee's Reserved Capacity on any channels other than the Channel, then Operator shall ensure the authorized GSA(s) of the channel(s) to which the Licensee's Reserved Capacity is shifted or loaded substantially overlaps the GSA for the Channel. To the extent that Licensee's Reserved Capacity is determined as a percentage or portion of the digital capacity on the Channel, such capacity will be determined by Operator in accordance with the processes generally used by it to determine capacity use.

(c) **Use of Capacity.** Operator may use Operator Capacity in any manner and for any purpose that is lawful, in analog, digital or any other format, including those that may be authorized in the future by the FCC. Operator will use the Operator Capacity in compliance with FCC Rules and all other laws and regulations applicable to Operator's use of the Operator Capacity. Licensee may use Licensee's Reserved Capacity for any purpose that furthers the educational mission of an accredited school, college or university, including to satisfy the minimum educational use requirements for EBS channels pursuant to FCC Rules. Licensee may also rely on the use of Operator's products and services made available pursuant to Section 7 to satisfy such requirements.

(d) **Section 27.1214(e) Amendments.** Pursuant to Section 27.1214(e) of the FCC's rules, on the date that is fifteen (15) years after the Effective Date and every five (5) years thereafter, Licensee will have a period of sixty (60) days to request a review of its minimum educational use requirements, at which time the Parties will negotiate in good faith an amendment to this Agreement that accommodates any *bona fide* changes in educational needs, technology and other relevant factors affecting Licensee's Reserved Capacity requirements. Notwithstanding the foregoing, the following will apply to any such amendment: (i) with respect to Licensee and any Permitted End User (defined below) for whom Operator has provided Internet Access Equipment (as defined in Subsection 7(b) below), Operator will make available any equipment, services or software upgrades that Operator makes generally available to Operator's retail customers subscribing to the same tier of services in the Market over EBS and BRS facilities; (ii) to the extent such amendment materially increases Operator's monthly costs either to operate its leased capacity or to meet Licensee's changed educational use requirements, the amendment may provide that such costs will be offset by a reduction in Operator's Monthly Fee for the remainder of the Term, a refund in an amount to be agreed upon by both Parties, or both; (iii) Operator may accommodate changes in Licensee's Reserved Capacity through any reasonable means available so as to avoid disruption to the advanced wireless services provided by Operator; and (iv) Operator will not be required to accommodate changes in Licensee's Reserved Capacity in a manner that has a negative economic impact on Operator or Operator's commercial operations under the Agreement.

(e) **Channel Swapping; Costs.** With the consent of Licensee, which consent will not be unreasonably withheld, conditioned, or delayed, Operator may require Licensee to enter into an agreement to swap its Channel for another channel in the Market (the "**Swapped Channel**"), and in connection therewith file any necessary FCC applications to accomplish the swap, so long as there is no material difference in the operational capability or value of the Swapped Channel as compared to Licensee's previous Channel taking into account such factors as the GSA and the population therein. It is understood and agreed, however, that Licensee will not be

required to consent to any swap under which the Swapped Channel provides fewer MHz of spectrum collectively, or less contiguous spectrum is licensed to Licensee, as compared with Licensee's previous Channel. Operator agrees to bear all costs and expenses associated with the implementation of channel swapping, including the reasonable out of pocket costs of Licensee's engineering consultants and attorneys.

## 6. EQUIPMENT

(a) **Operation and Maintenance of Licensee Equipment.** Licensee represents, warrants and covenants that as of the Commencement Date, no equipment owned or controlled by Licensee will be operated on the Operator Capacity or on Licensee Capacity.

(b) **Operation and Maintenance of Operator Equipment.** Operator will, at its expense, operate and maintain the transmission equipment used for the Operator Capacity ("Operator Equipment"). Operator will construct, operate and maintain facilities for the Channel that provide transmission capability sufficient to satisfy minimum build-out or performance requirements applicable to EBS channels under standards prevailing at any given time under FCC Rules.

(c) **Dedicated Equipment Purchase Option.** In the event this Agreement is terminated for any reason other than a default by Licensee or the natural expiration of the Agreement, Licensee will have the option, upon giving notice to Operator within thirty (30) days of such termination, to purchase or to lease at Operator's option that portion of the transmission equipment (not including any tower rights) then in operation that is dedicated solely to transmission of Licensee's Reserved Capacity on the Channel (the "**Dedicated Equipment**"), or comparable equipment. The price for such equipment will be equal to the fair market value of the Dedicated Equipment at the time of Licensee's notice or, if comparable equipment is provided, Operator's cost in obtaining such equipment.

(d) **Shared Equipment Purchase or Lease Option.** In the event this Agreement is terminated for any reason other than a default by Licensee or the natural expiration of the Agreement, Licensee will have the option upon giving notice to Operator within thirty (30) days of such termination to purchase or lease at Operator's option any equipment owned by Operator and used in connection with the transmission of Licensee's Reserved Capacity on the Channel that is not Dedicated Equipment, or comparable equipment (not including any tower rights) (the "**Shared Equipment**"), at a price equal to the Shared Equipment's fair market value for such purchase or lease as applicable.

## 7. ADVANCED WIRELESS SERVICES FOR PERMITTED END USERS

(a) **Service Credits.** Licensee may request at no cost to Licensee, via submission of an Order Form (as defined below), wireless broadband services and associated Internet Access Equipment, if any, for Permitted End Users to use Operator's wireless services within Operator's then-serviceable area of the Wireless System. Operator will approve Licensee's Order Form provided that such Order Form is consistent with the terms of this Agreement as well as the terms of use and service described in subsection (c) below. Such wireless services will be specified by Licensee and will be among Operator's standard retail service offerings in the Market with an overall value not to exceed the monthly amounts specified in the attached Schedule 7(a). Any unused Service Credits will expire on the last day of the month in which they are made available. Licensee must comply with all laws and obtain any necessary governmental permits or approvals, and third party approvals, which are necessary in order for Licensee to accept the wireless services and Internet Access Equipment for its Permitted End Users.

(b) **Definitions.** "**Order Form**" has the meaning set forth in the terms of service referenced in Subsection 7(c) below. "**Internet Access Equipment**" means the customer premises Internet access equipment package made generally available to Operator's retail customers in the Market, at the time Operator receives Licensee's Order Form, who subscribe to the same tier of Internet access service over EBS or BRS capacity. "**Permitted End Users**" means Licensee itself and any educational institution or not-for-profit organization or site in the Market with whom Licensee is working in furtherance of its educational goals.

(c) **Terms of Use.** Licensee's ordering and use of the wireless services and Internet Access Equipment by Licensee's users and Permitted End Users will be governed by the acceptable use policy and terms of service, and such other policies of general applicability which apply to such services, which are subject to amendment and may be found at [http://www.\\_\\_\\_\\_\\_.com](http://www._____.com) or such other URL as may be designated; provided, however, that financial terms contained in the terms of service will not apply to such services to Licensee or Permitted End Users that are provided free of charge pursuant to this Section 7. In addition to the foregoing policies, Operator may specify from time to time, in its sole discretion, reasonable procedures for the activation, addition, deletion or substitution of services to Licensee, its users and Permitted End Users.

(d) **Equipment and Software.** For Licensee and any Permitted End Users for whom Operator has provided Internet Access Equipment, Operator will make available any equipment, services or software upgrades that Operator makes generally available to Operator's retail customers subscribing to the same tier of service in the Market over EBS or BRS facilities. In the event that any equipment upgrade involves replacement of equipment, the replaced equipment will be returned to Operator or its designee and title to the replacement equipment will transfer to Licensee or its designee.

(e) **Title.** All equipment provided by Operator to Licensee as part of Internet Access Equipment for Permitted End Users will be the property of Licensee or its designee(s), free and clear of all liens and encumbrances, when paid in full (if any payment is required). Licensee will own, and be solely responsible for the maintenance and operation of, all Internet Access Equipment installed at Licensee's locations and receive sites, including the sites of its Permitted End Users.

## 8. INTERFERENCE CONSENTS

Licensee will enter into interference consents with third parties relating to the Channel ("**Interference Consents**"), as Operator reasonably requests and without any additional compensation, provided that such Interference Consents do not result in a reasonably foreseeable material degradation in the value of the Channel; and provided further that Interference Consents that involve fair and reciprocal rights and limitations for and on the operation of Licensee's facilities and the facilities of the other party in connection with system coordination inside GSAs and at GSA boundaries will not be deemed to cause material degradation in value; and provided further that any Interference Consent that requires the Licensee's signature shall first be reviewed and approved as to form by the New Jersey Attorney General's Office. Operator will negotiate and draft the Interference Consents and make any consideration payments due to third parties under the Interference Consents. Licensee will not enter into or issue any Interference Consents without Operator's prior written consent.

## 9. APPLICATIONS, COSTS AND FEES

(a) **FCC Long Term Lease Application.** If not already on file, within five (5) business days of the Effective Date, Licensee shall either (i) file the FCC Form 602 Ownership Disclosure Information for the Wireless Telecommunications Services (the "**Ownership Report**") with the FCC and deliver to Operator evidence of such filing or (ii) complete the Ownership Report and authorize Operator to file such Ownership Report with the FCC. Provided that the Licensee has either filed the Ownership Report with the FCC or has delivered the completed Ownership Report to Operator and authorized Operator to file such report with the FCC, within ten (10) business days following the Effective Date and prior to consummating the transfer of *de facto* control of the Channel, the Parties agree to cooperate as required to prepare and file with the FCC all forms and related exhibits, certifications and other documents necessary to obtain the FCC's consent to this Agreement and satisfy the FCC's requirements for long term *de facto* lease approval as set forth in 47 C.F.R. § 1.9030(e) ("**FCC Long Term Lease Application**"). Each Party covenants and agrees that it will fully cooperate with the other, and do all things reasonably necessary to timely submit, prosecute and defend the FCC Long Term Lease Application, including responding to any petitions for reconsideration or FCC reconsiderations of the grant of the FCC Long Term Lease Application, and will promptly file or provide the other Party with all other information which is required to be provided to the FCC in furtherance of the transactions contemplated by this Agreement. The Parties will disclose in the FCC Long Term Lease Application the automatic extension of the Term upon the renewal of the License. The Parties further covenant and agree to include a request in any License renewal application, or separately request, as necessary, an extension of the lease approval for the renewal of the License (or until the end of the final Renewal Term of this Agreement, if shorter), if this Agreement contemplates renewal of this Agreement for or during any part of such

License renewal term. To the extent Licensee is required to file this Agreement with the FCC, the Licensee shall first notify and consult with Operator, and will to the extent permitted by the FCC redact all information from the Agreement which Operator reasonably designates as confidential including, but not limited to, all payment information.

(b) **Application Preparation.** In addition to the obligations in Section 9(a), Operator will prepare and submit all applications, amendments, petitions, requests for waivers, and other documents necessary for the proper operation of Operator Capacity and permitted to be submitted by Operator under FCC Rules. Licensee, with assistance from Operator, will prepare and submit all lawful applications, amendments, petitions, requests for waivers, and other documents necessary for the modification, maintenance and renewal of the License or reasonably requested by Operator that may only be filed by Licensee under FCC Rules. The Parties will cooperate in the preparation and submission of all lawful applications, amendments, petitions, requests for waivers, and other documents necessary to secure any FCC approval, consent or other action required to effectuate this Agreement.

(c) **Application Costs.** Operator will, at its own expense, prepare all applications, notices, certificates, exhibits, consent agreements, approvals or authorizations that Operator submits to the FCC or seeks to have Licensee submit to the FCC pursuant to the Agreement. Operator will also promptly pay or reimburse Licensee for its reasonable, documented out-of-pocket costs for renewal of the License and any other filings requested or required of Licensee by the FCC to hold the License and provide Operator Capacity to Operator, and in connection with activities undertaken by Licensee in response to any request by Operator under this Agreement; provided, however, that Licensee shall not seek reimbursement for any cost or expense in excess of \$500 unless such cost or expense is approved by Operator, which approval shall not be unreasonably withheld. In addition, Operator will pay any FCC filing fees associated with the License.

(d) **Regulatory Fees/Transition Reimbursements.** Operator will pay any federal regulatory fees associated with the License upon receipt of notice from the FCC that such fees are due, or upon receipt of at least thirty (30) days advance written notice from Licensee that such fees are due in the event that notice is sent to Licensee. Operator will also pay any Transition reimbursements required by FCC Rules to be paid to the Proponent.

(e) **Additional FCC Matters.** Operator and Licensee will cooperate to prepare and file any additional FCC filings to protect, maintain or enhance the Channel including but not limited to filings to increase the capacity on the Channel, GSA expansions or License modifications. Operator and Licensee will also cooperate to support FCC experimental licensing procedures with respect to the Channel pursuant to the Code of Federal Regulations Title 47, Part 5—Experimental Radio Service (Other Than Broadcast). Operator may allow experimental licensees, as granted by the FCC, to use the Operator Capacity without prior consent from Licensee pursuant to the terms of this Agreement.

## **10. TRANSFERS OR ASSIGNMENTS**

Subject to Subsections 16(f)-(g), neither Operator nor Licensee may assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Parties agree as follows:

(a) Operator may, without the prior consent of Licensee: (i) assign any of its rights under this Agreement as collateral; or (ii) sell, assign, sublease, delegate or transfer this Agreement or any of its rights or obligations hereunder to (X) any affiliate of Operator, (Y) any entity that acquires or otherwise merges with Operator or its affiliates, or (Z) to any entity with the capability to perform the obligations of Operator hereunder.

(b) Licensee may, without the prior consent of Operator transfer control or assign the License for the Channel and this Agreement to any public institution or agency or to any bona fide local private educational institution with students actually enrolled in local classroom instruction (except for any such public or private educational institution that is an Affiliate of a national EBS licensee) (a "Successor Licensee"), subject to such transferee's or assignee's agreement to be bound by the terms of this Agreement. Upon any such assignment to and assumption by a Successor Licensee of all of the rights and obligations of Licensee hereunder, neither the New Jersey Public Broadcasting Authority nor the State of New Jersey shall have any further rights or obligations under



this Agreement. For purposes of the foregoing, “Affiliate” means, with respect to any national EBS licensee, any other person or entity that, directly or indirectly, alone or through one or more intermediaries, controls, is controlled by or is under common control with such national EBS licensee. For purposes of this definition, “control” means the power to direct or cause the direction of the management and policies of a person or entity, directly or indirectly, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

(c) Each Party shall also be entitled, without the consent of the other Party, to undertake a pro forma assignment or transfer of this Agreement.

## **11. TERMINATION OF AGREEMENT**

(a) This Agreement will automatically terminate with respect to the License or the Channel upon the earlier of: (i) an FCC Final Order denying any application for approval of this Agreement including any extensions of the Term thereof; (ii) the loss or expiration without renewal of the License; (iii) an FCC Final Order revoking, terminating or canceling the License; or (iv) Operator’s acquisition of the License or some of the Channel pursuant to an agreement between Operator and Licensee.

(b) This Agreement may be terminated by either Party upon material breach of the other Party, provided that the breaching Party shall be provided with written notice by the non-breaching Party of the alleged grounds for the breach and allowed a thirty (30) day period for cure following such notice; provided, however, that in the event of a breach other than a failure to make payments due under this Agreement, if the breaching Party proceeds with reasonable diligence during such thirty (30) day period and is unable, because of circumstances beyond its control or because of the nature of the breach, to cure the breach within such applicable time period, the time for cure shall be extended, but in no event beyond one hundred eighty (180) days after receipt of written notice from the non-breaching Party. Notwithstanding the foregoing, in the event that an FCC order that is effective and not stayed requires termination of this Agreement, this Agreement may be terminated by either Party within the time frame for notice and termination required by the FCC.

(c) Licensee may terminate this Agreement pursuant to Subsection 16(b).

(d) Either Party may terminate this Agreement if an FCC Final Order approving the FCC Long Term Lease Application has not occurred within twelve (12) months following the Effective Date.

(e) The Parties will notify the FCC of the termination of this Agreement with respect to the License or any of the Channel within ten (10) calendar days following the termination.

(f) Except as expressly set forth in this Agreement, upon the expiration or termination of this Agreement, each Party will pay its own fees and expenses related to this Agreement and the transactions contemplated herein, and the Parties will have no further liability to each other except by reason of any breach of this Agreement occurring prior to the date of expiration or termination. Any termination or expiration of this Agreement, regardless of cause, will not release either Licensee or Operator from any liability arising from any breach or violation by that Party of the terms of this Agreement prior to the expiration or termination. The general and procedural provisions of this Agreement, which may be relevant to enforcing the obligations or duties of the Parties, as well as any other provisions that by their terms obligate either Party following expiration or termination, will survive the expiration or termination of this Agreement until the obligations or duties are performed or discharged in full.

(g) In the event (i) Licensee rightfully terminates this Agreement pursuant to this Section 11 or the Term of this Agreement expires and is not renewed pursuant to Section 1 and (ii) after the date of such expiration or earlier termination Operator fails to cease its use of the Channel, then Operator will pay to Licensee as liquidated damages for such continued usage, a monthly amount equal to three (3) times the Monthly Fee paid during the last month of the Term, for each month that Operator continues such usage (the “Liquidated Damages”). Notwithstanding the foregoing, in the event Operator in good faith contests Licensee’s right to terminate this Agreement, no Liquidated Damages shall be due unless and until a court of competent jurisdiction has made a final

ruling upholding Licensee's right to terminate, and such ruling is not subject to any pending appeal or petition for reconsideration, and the time for the filing of any such petition or appeal has passed.

## **12. REVENUES AND EXPENSES**

Each Party will pay its own expenses incident to any amendments or modifications to the Agreement, including, but not limited to, all fees and expenses of their respective legal counsel and any engineering and accounting expenses. Operator is entitled to one hundred percent (100%) of the revenue generated from the use of the Operator Capacity.

## **13. COMPETITION**

Licensee agrees that it will not, during the Term of this Agreement, engage in building, operating, managing or distributing, on a for-profit basis, a wireless broadband network utilizing Licensee's Reserved Capacity.

## **14. POLITICAL CAMPAIGN CONTRIBUTION COMPLIANCE REQUIREMENTS – P.L. 2005, C.51**

14.1 For the purpose of this Section 14, the following shall be defined as follows:

(a) Contribution - means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

(b) Business Entity - means:

i. a for-profit entity as follows:

- A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;
- B. in the case of a general partnership: the partnership and any partner;
- C. in the case of a limited partnership: the limited partnership and any partner;
- D. in the case of a professional corporation: the professional corporation any shareholder or officer;
- E. in the case of a limited liability company: the limited liability company and any member;
- F. in the case of a limited liability partnership: the limited liability partnership and any partner;
- G. in the case of a sole proprietorship: the proprietor; and
- H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

ii. any subsidiary directly or indirectly controlled by the business entity;

iii. any political organization organized under section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

iv. with respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, this Order shall not apply to a contribution made by such spouse,

civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").

(c) PL 2005, c.51 – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

(d) Authority – means New Jersey Public Broadcasting Authority.

14.2 The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Operator shall be a material term of this Agreement.

14.3 Operator hereby certifies to the Authority that commencing on and after October 15, 2004, Operator (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Operator and the Authority pursuant to P.L. 2005, c. 51. Operator hereby further certifies to the Authority that any and all certifications and disclosures delivered to the Authority by Operator (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

14.4 Operator hereby covenants that Operator (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Paragraph 14.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Operator (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

14.5 In addition to any other Event of Default specified in the Contract Documents, the Authority shall have the right to declare an event of default under this Agreement if: (i) Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Operator (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or

indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Operator to the Authority in connection with this Agreement.

14.6 Operator hereby acknowledges and agrees that pursuant to P.L. 2005, c. 51, Operator shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire Contract Price is paid by the Authority, any Contribution is made by Operator and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

## **15. ASSUMPTION OF LIABILITIES**

Neither Party is assuming or will be responsible for any of the other's liabilities or obligations (including but not limited to customer obligations) except as required by the FCC and this Agreement.

## **16. FCC-MANDATED LEASING ARRANGEMENT OBLIGATIONS**

(a) Licensee and Operator are familiar with the FCC Rules affecting spectrum leasing and the provision of EBS, the Communications Act of 1934, as amended ("**Communications Act**"), the Code of Federal Regulations, and all other applicable FCC Rules, and agree to comply with all such laws and regulations.

(b) Operator assumes primary responsibility for complying with the Communications Act, and any FCC Rules that apply to the Channel and License, and the Agreement may be revoked, cancelled or terminated, in accordance with Section 11, by Licensee or by the FCC if Operator fails to comply with applicable laws and regulations.

(c) Neither Licensee nor Operator will represent itself as the legal representative of the other before the FCC or any party, but will cooperate with each other with respect to FCC matters concerning the License and the Channel.

(d) If the License is revoked, cancelled, terminated or otherwise ceases to be in effect, Operator has no continuing authority or right to use the leased spectrum unless otherwise authorized by the FCC.

(e) The Agreement is not an assignment, sale or transfer of the License itself.

(f) The Agreement will not be assigned to any entity that is ineligible or unqualified to enter into a spectrum leasing arrangement under the FCC Rules.

(g) Licensee will not consent to an assignment of a spectrum leasing arrangement unless such assignment complies with applicable FCC Rules.

(h) Licensee and Operator must each retain a copy of the Agreement and make it available upon request by the FCC.

## **17. LICENSEE'S AUTHORIZATIONS**

Licensee will use its best efforts to maintain in full force and effect through the Term the License and any associated authorizations for the Channel, and will remain eligible under the FCC Rules to provide the Operator Capacity. Licensee will use best efforts to renew the License, and will not commit any act, engage in any activity, or fail to take any action that could reasonably be expected to cause the FCC to impair, revoke, cancel, suspend or refuse to renew the License.

## **18. REPRESENTATIONS AND WARRANTIES**

(a) **Mutual Representations and Warranties.** Each Party represents and warrants to the other that: (i) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms; and (iv) its execution of and performance under this Agreement will not violate any applicable existing regulations, FCC Rules, statutes or court orders of any local, state or federal government agency, court or body, or any of its existing contractual obligations.

(b) **Licensee's Representations and Warranties.** Further, Licensee represents and warrants to Operator that: (i) the License is in effect, (ii) Licensee's operations and activities pursuant to the License, if any, are being conducted in material compliance with all FCC Rules, including its educational use requirements, (iii) Licensee has no claim or other unresolved objection arising out of the transition pursuant to Sections 27.1230 through 27.1235 of the FCC's Rules, and (iv) there is no proceeding now pending or to the knowledge of Licensee, threatened against the Licensee before any local, state or federal regulatory body with respect to the License, or any acts or omissions by Licensee or its agents, as of the Effective Date, that could have a material, adverse effect on the License.

## **19. RESERVED**

## **20. MISCELLANEOUS**

(a) **Cooperation.** The Parties will take such further action and execute such further assurances, documents and certificates as either Party may reasonably request to effectuate the purposes of this Agreement.

(b) **Notices.** Any notice required to be given by one Party to the other under this Agreement will be delivered using a reliable national express overnight delivery service and will be effective upon receipt. All notices will be delivered to Licensee and Operator at the mailing addresses specified on the signature page of this Agreement. Either Party may change its addresses for receipt of notice or payment by giving notice of such change to the other Party as provided in this Section.

(c) **Force Majeure.** Neither Party will be liable for any nonperformance under this Agreement due to causes beyond its reasonable control that could not have been reasonably anticipated by the non-performing Party and that cannot be reasonably avoided or overcome; provided that the non-performing Party gives the other Party prompt written notice of such cause, and in any event, within fifteen (15) calendar days of its discovery.

(d) **Independent Parties.** None of the provisions of this Agreement will be deemed to constitute a partnership, joint venture, or any other such relationship between the Parties, and neither Party will have any authority to bind the other in any manner. Neither Party will have or hold itself out as having any right, authority or agency to act on behalf of the other Party in any capacity or in any manner, except as may be specifically authorized in this Agreement.

(e) **Specific Performance.** Licensee acknowledges that the License and the Channel subject to this Agreement are unique and the loss to Operator due to Licensee's failure to perform this Agreement could not be easily measured with damages. Operator will be entitled to injunctive relief and specific enforcement of this Agreement in a court of equity without proof of specific monetary damages, but without waiving any right thereto, in the event of breach of this Agreement by Licensee.

(f) **Applicable Law and Venue.** The validity, construction and performance of this Agreement will be governed by and construed in accordance with the laws of the State of New Jersey, without regard to the principles of conflict of laws. Each Party hereto irrevocably consents to the exclusive jurisdiction and venue of any court within Mercer County, New Jersey, in connection with any matter based upon or arising out of

this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of New Jersey for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue or process. ANY CLAIMS OF A CONTRACTUAL NATURE MADE HEREUNDER SHALL BE GOVERNED BY AND SUBJECT TO THE NEW JERSEY CONTRACTUAL LIABILITY ACT (N.J.S.A. 59:13-1, ET SEQ.). OPERATOR, AND ANY PARTY MAKING A CLAIM ON BEHALF OF OPERATOR, SHALL HAVE ONLY THE RIGHTS REMEDIES PROVIDED UNDER SAID ACT.

(g) **Attorneys' Fees.** If any action shall be brought on account of any breach of or to enforce or interpret any of the terms, covenants or conditions of this Agreement, the prevailing Party will be entitled to recover from the other its reasonable attorneys' fees and costs, as determined by the court hearing the action.

(h) **Severability.** If any provision of this Agreement is found to be illegal, invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, unless continued enforcement of the provisions frustrates the intent of the Parties.

(i) **No Waiver.** No delay or failure by either Party in exercising any right under this Agreement, and no partial or single exercise of that right, will constitute a waiver of that or any other right. Failure to enforce any right under this Agreement will not be deemed a waiver of future enforcement of that or any other right.

(j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument. Original signatures transmitted by facsimile will be effective to create such counterparts.

(k) **Headings.** The headings and captions used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

(l) **Construction.** The Parties and their respective counsel have negotiated this Agreement. This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either Party based on draftsmanship of the Agreement or otherwise.

(m) **Complete Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter addressed, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, between the Parties or any of their affiliates regarding this subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of each of the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the Effective Date.

AGREED TO:

\_\_\_\_\_

**NEW JERSEY PUBLIC BROADCASTING  
AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address for Operator:

Notice address for Licensee:

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Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

With a copy to:

With a copy to:

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Attn: \_\_\_\_\_

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Fax: \_\_\_\_\_

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